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SERVICE DATE - MARCH 18, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 24X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC., D/B/A
CANADIAN PACIFIC RAILWAY COMPANY—ABANDONMENT EXEMPTION –
IN ALBANY COUNTY, NY

Decided: March 17, 2004

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company (D&H), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.3 +/- mile line of railroad known as the Troy Branch extending from milepost T1.81 +/- at Green Island to milepost T3.11 +/- at Cohoes, in Albany County, NY. Notice of the exemption was served and published in the Federal Register on February 18, 2004 (69 FR 7666). The exemption is scheduled to become effective on March 19, 2004.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding that was served on February 23, 2004. In the EA, SEA states that there is a hazardous waste site located adjacent to the property at New York State Department of Environmental Conservation (NYS DEC) Site No. 401007. Therefore, SEA recommends that, prior to commencing any work in the area that would have an impact on NYS DEC Site No. 401007, D&H be required to consult with NYS DEC. SEA also states that there are concerns by the NYS DEC regarding the presence of the Giant Pine-drop, an endangered plant species. Therefore, SEA recommends that, prior to any salvage activities, D&H be required to consult with NYS DEC regarding the presence of the Giant Pine-drop, an endangered plant species, in or adjacent to the right-of-way. SEA indicates that the Michigan State Historic Preservation Officer (SHPO) has not completed its review of the proposed abandonment. Therefore, SEA recommends that D&H be required to retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). Finally, SEA notes that one geodetic station marker has been identified in the proposed abandonment area, Pids MZO787-Designation Z64. Accordingly, SEA recommends that D&H be required to contact and provide the National Geodetic Survey (NGS) with at least 90 days' notice prior to any salvage activities that may disturb or destroy the geodetic station marker in order to plan for its relocation.

No comments to the EA were filed by the March 8, 2004 due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

In the EA, SEA also indicated that the right-of-way may be suitable for other public use following abandonment of the line. On February 9, 2004, the Village of Green Island (VGI) filed a request for imposition of a 180-day public use condition under 49 U.S.C. 10905 in order to finalize its negotiations for the right-of-way with D&H. VGI requests that D&H be prohibited from disposing of the corridor, other than track, ties and signal equipment, except for public use on reasonable terms.

VGI has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the period of time requested. Accordingly, the requested 180-day public use condition will be imposed on the rail line to be abandoned, commencing from the effective date of this decision, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes. Therefore, with respect to the public use condition, D&H is not required to deal exclusively with VGI, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for imposition of a public use condition is granted, as discussed in this decision.
3. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that D&H shall: (1) prior to commencing any work in the area that would have an impact on NYS DEC Site No. 401007, consult with NYS DEC; (2) prior to any salvage activities, consult with NYS DEC regarding the presence of the Giant Pine-drop, an endangered plant species, in or adjacent to the right-of-way; (3) retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until the completion of the section 106 process of the NHPA; (4) prior to any salvage activities that may disturb or destroy the geodetic station marker identified on the line, contact and provide NGS with at least 90 days' notice in order to plan for its relocation; and (5) keep intact the right-of-way (except the track, ties and signal equipment) for a

period of 180 days from the effective date of the exemption to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary